Land Appreciation Charges & Cover-up Attempt by AWHO

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LAND APPRECIATION CHARGES & COVER-UP ATTEMPT BY AWHO

There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest – Elie Wiesel

What we desire to accomplish is, the protection of rights: What we have to inquire is: The means by which protection may be afforded....That men are susceptible of happiness, only in proportion as rights are protected, is a proposition, which, taken generally, it is unnecessary to prove. The importance of the inquiry, therefore, is evident.  

I  INTRODUCTION

A WHO was established as a Society under the Rule of Law expressly for the welfare of its members and NOT established as a foray by Army Headquarters into Real Estate business in a thriving real estate market at this particular stage in the country’s economy. We, the people, still believe that our obligations as proud Indians and more importantly, as proud veterans, are not just to ourselves, but to all posterity for creating a Society of equals and not divide ourselves into “Rulers” (powerful, autocratic and ever ready to exploit the powerless) and powerless “Subjects”.

Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all.

II  LAND APPRECIATION CHARGES: BACKGROUND

When there was furore as to how the construction cost had gone up by 372% where as the corresponding data for industry is only 78% (considering that

1 Jurisprudence, Supplement to Encyclopaedia Brittanica
2 Aristotle, Politics (c340 BC)
the land was bought as far back as 2004 and the members were charged fully for the land and development cost including bridge financing charges in 2004 itself, AWHO had to find some explanation for the sky rocketing of costs by 372.10% and AWHO (by the Dy Director Finance) comes up with a clever explanation:

2. Percentage of land price appreciation to be charged to allottees is fixed based on Standard Operating Procedure which are approved by the Executive Committee/Board of Management as also amended by the same bodies from time to time.

3. Being a “No Profit No Loss” Organisation, AWHO does not have a corpus contributes by all Indian Army Personnel. Some land has been procured by AWHO after due diligence on expected appreciation in its market value. For this purpose AWHO has taken loans for which an interest is also being paid by it. Obviously, you would agree that this has to be paid by the allottees.

4. It may also be noted that historically, by and large, appreciation in land market cost is far higher than the nominal rate of interest/charged to allottees. Hence, allottees have invariably stood to gain from this SOP.

The Dir (F&A) AWHO wrote on 1 Nov 2013 some 60 days later a clever cover up:

2. No “Land Appreciation Charge” is being levied by AWHO. AWHO charges only the land cost and the cost of raising finances (interest being paid to loaning agency etc) as brought out by you in Para 4 of your e-mail referred above.

3. The words “percentage of land price appreciation” were wrongly put in the reply as they convey different meaning.

4. Inconvenience caused is regretted please.

What happened in between that caused such reversal of 180 degrees of AWHOs claim is interesting to study and the motivation for such reversal of stand by AWHO is illuminating.

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3Sushil Kumar, Dy Dir (Finance) For MD AWHO responded on Mon, Aug 26, 2013 at 4:48 PM, awho@vsnl.com

4Dir (F&A) AWHO For MD AWHO retracted the original claim on Fri, Nov 1, 2013 at 11:24 AM, awho@vsnl.com
III REQUEST FOR EXPLANATION BY MEMBER, AWHO

A Member, AWHO Society has objected/requested explanation for the bizarre charge of “Land Appreciation” charge thus:

I learn from your above communication the following for the first time:

1. that there is a “land appreciation charge” charged by AWHO on all allottees and these charges are done periodically by AWHO. This is a cost to the allottees but AWHO justifies this on the basis of the appreciation in land price over a period beginning with purchase of land by advances made by the allottees till the final price of the property is charged.

2. You have not stated the percentage of cost price that forms the appreciation charges and also the frequency of such charges: whether they are one time or monthly, quarterly, half yearly or yearly.

3. No doubt we all agree with you that the cost of land paid, cost of raising finances if any, mortgage charges if any and development costs and other government charges like taxes, water, electricity etc. if used during development are required to be paid by the allottees. No one has any doubts on the validity of such charges.

4. You state: Even after charging of “appreciation charges periodically” at stipulated rates from the allottees, the allottees benefit since the appreciation in price normally far outstrips the “appreciation charges”.

5. Your assertion: “appreciation in land market cost is far higher than the nominal rate of interest/charged to allottees. Hence, allottees have invariably stood to gain from this SOP.” may not exactly be true. Perhaps you wanted to state that there is overall gain due to appreciation of land prices in spite of such charges made by AWHO.

Please clarify the following:

Response to the concealed & illegal secret charges on Tue, Aug 27, 2013 at 8:53 AM CPC cpcnath@gmail.com
1. The exact wording of the rule under which such charges were approved by the BoM
2. Justification given for such a charge when this was imposed under the rule created by BoM
3. When was this charge imposed for the first time?
4. The percentage rates charged (as percentage of the land investment) and The frequency of charges.
5. What other similar charges that are unknown to allottees are charged to the allottees while calculating the final installment?

There was NO response to this for full 2 months and then we notice a sudden attempt to cover up on 1 Nov 2013!

IV LEGAL NOTICE BEFORE APPROACHING THE COURTS/ FILING OF FIR FOR CRIMES

A final legal notice was served to AWHO on all the illegalities including the concealed and illegal secret charges named “Land Appreciation Charges” in which I had requested for the following:

A Action Requested

1. Address all issues raised in the enclosed communication and respond ASAP.

2. Abandon all attempts to cover up. (“Truth never damages a cause that is just.” Mahatma Gandhi)

3. Introduce total transparency and openness in all governance with a vengeance. (Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.- Justice Louis Brandeis, Other Peoples Money and How Bankers Use It (1914).)

4. Comply with the constitution, statutes and case laws rigorously.

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6Legal notice to AWHO on Tue, Oct 22, 2013 at 1:46 PM CPC cpcnath@gmail.com
5. Implement RTI for all members of the Society who are the true stakeholders rigorously.

6. If any crimes/violations of law come to light (as has already been shown), prosecute the suspect with rigor however high the accused/suspect. No one is above the law!

B RTI

1. Please provide all the information and justification requested vide Chapters 2, 3, 4, 6, 8, 10, 11, 12, 13, 19, 20 and 21 ([http://works.bepress.com/chandra_nath/3/](http://works.bepress.com/chandra_nath/3/)). Since all other members are also entitled and desirous of this information, electronic copy of the same may be organised in the form of a tree / chapters and put on the website so that the same will be available to all those who have a need and a right to know.

2. In case you determine that the Members and stakeholders are NOT authorized to such right to information, please convert this to a request under RTI and provide the information. The fee for RTI will be deposited as soon as I hear from you the actual cost for RTI.

C Legal Notice

Please take this as final

1. Legal notice to you before approaching the higher courts against violation of fundamental rights of equal protection of laws, violation of constitutionally guaranteed property rights and violation of statutes and case laws.

2. Legal notice before filing of case against violation Article 21 (3) of Universal Declaration of Human Rights.

3. Legal notice before seeking criminal procedure against crimes against the Members/allotteess and to reverse these illegal actions.

4. Legal notice for Sanction under Chapter V of the Prevention of Corruption Act 1988. Please forward this to your superiors in the Government for sanction. notice before requesting for initiating disciplinary proceedings for dereliction of duty constituting Misconduct
5. Legal notice under Section 80 of the Code of Civil Procedure provides that no suit shall be instituted against the Government or a Public Officer in respect of an official act.

6. and lastly, legal notice under Section 96 of the Rules of AWHO albeit these rules are illegal and illegitimate for reasons explained within in excruciating detail.

V  COVER UP

Instead of responding to repeated desperate requests for compliance with law and justice for the contributing members of the Society, who are totally disenfranchised and consisting of veterans in their 60s, 70s and 80s, the BoM constituting non-contributing psuedo members and the “servants of the Society” are engaged in cover up, not realizing that a full cover up will require each and every one of the following and that will be difficult to achieve with out spilling the beans some where:

1. How to cover up the assertion of “Percentage of land price appreciation to be charged to allottees is fixed based on Standard Operating Procedure which are approved by the Executive Committee/ Board of Management as also amended by the same bodies from time to time” by none other than Sushil Kumar, Dy Dir (finance) For MD AWHO!

2. Remove the relevant Board meeting minutes from the records.

3. Remove the directions as per the Minutes for charging of “land appreciation charge”

4. Remove the charges made to each allottee in this project under this head,

5. Or at least rename the charges made under some other heading.

6. Remove or rename the charges made in all other projects for every allottee since such charges were introduced.

7. Requiring the Dy Dir (Finance) to state under oath that what he stated was untruth and state the reason why he stated a lie in the first place.

8. Requiring the Dir (F&A) AWHO to state under oath that what is stated was truth and that there has NEVER been any thing like “land appreciation charge”
9. Withdrawing the copy of the instructions that has already leaked and circulated to the Members of AWHO who managed to obtain a copy of the directions on “land appreciation charge”

10. Adjusting the excess charges to 372.10% (an amount as big as Rs 20 to 25 Lakhs per allottee if we take the industry escalation of 78% as the actual escalation.

11. Rs 20 to 25 lakhs per allottees can not be adjusted against land cost or management cost or construction cost as these costs are recorded in the land deed/land and development cost already charged, management cost is limited to 3% at most and the construction costs are as per contract tender costs which can not be amended at this stage, respectively.

12. To depend on the cover up to be buried under the current regime of total opacity (lack of transparency) of the project accounts of AWHO as once the criminal offences of false charging are arraigned, the opacity will have gone for good!

13. “Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given.- The promoter shall maintain a separate account in any bank of sums taken by him, from persons intending to take or who have taken flats, as advance or deposit, including any sums so taken towards the share capital for the formation of a co-operative society or a company, or towards the outgoings (including ground rent, if any municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes”.

14. The money deposited in advance are to be treated as “held in trust” as per Karnataka Act 1972 and also

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Advocate of not less than seven years standing;

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

Karnataka Act 1972: [http://dpal.kar.nic.in/16%20of%201973%20(E).pdf](http://dpal.kar.nic.in/16%20of%201973%20(E).pdf)
15. AWHO has already undertaken to NOT encumber the land in their certificate to the loaning agencies of the Members. So just empty assertion that the charges are interest charges on loans raised for land purchase will not stand in a court of law with out proof of such loan:

(a) When was it raised?
(b) Who was the loan raised from?
(c) How much was the interest rate?
(d) How much was the period of the loan?
(e) Why was it raised since the allottees have paid the cost of land & development way back in 2004-2005 and have paid the construction costs as per schedule of construction?

16. Non-Profit status is often being cited by AWHO as bestowing some special powers, rights and privileges. The fact is that it does not provide any of this. If any thing, it binds some duties, liabilities and disabilities on AWHO. Undoubtedly, AWHO has a duty to its members:

(a) NOT to make any profit out of its dealings/transactions with its members.
(b) NOT to charge for those items for which it has not paid any price or incurred any expense.
(c) to charge its members at cost price and cost price alone.
(d) to distribute surpluses if any at the end of the Project.
(e) to be transparent to demonstrate the truth of all of the above in a verifiable manner to the Members rather than abandon them to believe these on the basis of “pure trust alone” which is demonstrably doubt-worthy by its absolute lack of transparency.

17. AWHO’s Trustee status imposes legal and ethical duties viz. fiduciary responsibility towards its beneficiaries:

(a) Duty of care requires them to exercise careful oversight
(b) Duty of loyalty, which requires them to exercise their powers in the interest of the Society and its members alone rather than in their own or anyone else’s interest.

Prime element of accountability requires them to avoiding conflicts of interest, or the appearance of conflict, within the Board and throughout the Society. By blocking transparency and RTI, BoM demonstrated total Conflict of Interest!(Home-buyers want total transparency and home-builder wants total lack of transparency and home-builder interest has usurped the Society of Home-buyers illegally and forcibly!)

The accountability process offers a way to see when integrity is missing...If fraud refers to the “deliberate actions taken by management at any level to deceive, con, swindle, or cheat investors or other key stakeholders”, does this not qualify as fraud?

VI COVER UP VS TRANSPARENCY

A cover-up is an attempt, whether successful or not, to conceal evidence of wrongdoing, error, incompetence or other embarrassing information. In a passive cover-up, information is simply not provided; in an active cover-up, deception is used. The expression is usually applied to people in positions of authority who abuse their power to avoid or silence criticism or to deflect guilt of wrongdoing. Those who initiate a cover up (or their allies) may be responsible for a misdeed, a breach of trust or duty or a crime. Initially a cover-up may require little effort; it will be carried out by those closely involved with the misdeed. Once some hint of the hidden matter starts to become known, the cover-up gradually draws all the top leadership, at least, of an organization into complicity in covering up a misdeed or even crime that may have originally been committed by a few of its members acting independently. This may be regarded as tacit approval of that behaviour. The original misdeed being covered may be relatively minor, such as the 'third-rate burglary' which started the Watergate scandal, but the cover-up adds so many additional crimes (obstruction of justice, perjury, payoffs and bribes, in some cases suspicious suicides or outright murder) that the cover-up becomes much more serious than the original crime.

With statutorily mandated transparency, truth can never be hidden.

“Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”–Louis D. Brandeis

Also, please do not forget:

“Truth never damages a cause that is just.” – Mahatma Gandhi
VII AWHO & RTI

“On the issue of RTI, Dy MD, AWHO recently stated (21 Oct 2013) that they have again appealed against it.” A Member of AWHO writes. AWHO is using our funds to fight against transparency! (we members ought to be outraged!)

Here is a Society that is

1. NOT accountable to the Members, the only stakeholders who fund the society.

2. NOT accountable to the tax payer in spite of the tax free status.

Accountability goes to the very heart of your duty as a board member.


Here is our Society, AWHO, who wants no accountability to its members and does not want to provide any information to its own members who are both members and customers who fund the projects fully. On what legal, moral or ethical grounds can AWHO justify denying information to its own members? And they want to go on appeal at “our expense” against RTI decision under which Delhi HC dismissed AWHO writ! The AWHO writ in HC challenging RTI decision which was dismissed by HC was filed with AG as the respondent.

We, the Members hereby formally ask AWHO to make us respondents to such appeals or else AWHO will file writ against AG and AG will, instead of being an adversary, support AWHO in their attempt to deny transparency & continue being as opaque as possible. It is a shame that AWHO will do any thing to deny transparency that too against their own members and sole contributors of funds! Can AWHO justify/support this urge by any logic/reason? Any decision unsupported by logic/reason is arbitrary, illogical, unethical and totally devoid of leagality/justice against veterans for whose welfare alone AWHO exist!

Justice will not be served until those who are unaffected are as outraged as those who are.– Benjamin Franklin